



Signed and Filed: August 04, 2009

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
GEORGE QUINN CHEN,) No. 03-32157DM
Debtor.) Chapter 7
E. LYNN SCHOENMANN, as Trustee of) Adversary Proceeding
the Chapter 7 Estate of George) No. 07-3108DM
Quinn Chen, Debtor,)
Plaintiff,)
v.)
GEORGE QUINN CHEN, an individual)
CYNTHIA WONG, an individual,)
SHANGHAI 1930 LLC, a California)
limited liability company, and)
SHANGHAI 1930 RESTAURANT PARTNERS,)
L.P., a California limited partner-)
ship,)
Defendants.)

MEMORANDUM DECISION ON MOTION TO RECONSIDER

I. BACKGROUND¹

On January 1, 2002, debtor, George Quinn Chen ("Chen") and Cynthia Wong ("Wong"), husband and wife, executed a document purporting to transfer 51% of Chen's 100% interest in Shanghai

¹ This Memorandum Decision constitutes the court's findings of fact and conclusions of law under Fed. R. Bankr. P. 7052.

1 1930, LLC ("the LLC") to Wong, which they believed effectuated a
2 transmutation of Chen's separate property to Wong's separate
3 property under Cal. Fam. Code § 852. Shanghai 1930 is a
4 restaurant Chen founded in 1997. The restaurant is owned by
5 Shanghai 1930 Restaurant Partners, L.P. The LLC is the general
6 partner of the L.P., and it owns approximately 70% of the
7 partnership. The transfer of Chen's 51% ownership interest in the
8 LLC to Wong was in exchange for her agreement to manage the day-
9 to-day operations of the restaurant. She has successfully managed
10 the restaurant since that time.

11 Chen filed a chapter 13 bankruptcy² on July 25, 2003, which
12 was later converted to chapter 11 then to chapter 7. In 2007, the
13 chapter 7 trustee ("Trustee") sought to sell the estate's interest
14 in the LLC. She contended that the estate held 100% of the
15 ownership interest in the LLC pursuant to section 541(a). Wong
16 objected, contending that she owned 51% of the LLC.

17 On November 14, 2007, the court approved the sale of the
18 estate's interest in the LLC to Wong, leaving open the question of
19 what percentage of the LLC belonged to the estate. Wong paid the
20 estate \$75,000, plus she agreed to pay an additional \$300,000 if
21 it was later determined that the estate owned 100% of the LLC
22 shares. If the estate owned anything less than a 100% interest,
23 then Wong owed nothing more. The Trustee holds a deposit from
24 Wong for \$150,000 to be credited against the \$300,000 contingent

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26 ² Unless otherwise indicated, all chapter, section and rule
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
28 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as
enacted and promulgated prior to the effective date of The
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,
Pub. L. 109-8, 119 Stat. 23.

1 consideration, if owed.

2 The Trustee's first cause of action in this adversary
3 proceeding sought to declare that the estate owned a 100% interest
4 in the LLC on the sale date. On August 26, 2008, Defendants filed
5 their Motion for Summary Judgment on Plaintiff's First Cause of
6 Action, contending that Wong owned a 51% interest on that date as
7 her separate property. Accordingly, Defendants argued, Wong owed
8 nothing beyond the \$75,000 to the Trustee for the shares. The
9 Trustee filed her Opposition and Cross-Motion for Partial Summary
10 Judgment on this issue on September 12, 2008.

11 The court determined that the transfer document executed on
12 January 1, 2002, by Chen and Wong failed to comply with the
13 transmutation requirements of Cal. Fam. Code § 852 and thus it
14 only effectuated a transfer of Chen's 100% separate property
15 interest in the LLC to the community property of the marital
16 estate. As a result, on November 14, 2008, the court denied
17 Defendants' motion and granted the Trustee's cross-motion,
18 determining that the estate owned 100% of the LLC shares at the
19 time of sale and thus Wong had to tender the agreed payment to the
20 Trustee.

21 Pursuant to Rule 9024 and Fed. R. Civ. P. 60(b)(1),
22 Defendants, with new counsel, filed a Motion to Reconsider Order
23 Granting Cross-Motion for Summary Judgment on this issue on April
24 20, 2009. Defendants believed that their previous counsel
25 overlooked an important provision of California family law that
26 would have given the court a separate and independent ground on
27 which to render summary judgment in their favor. They argued that
28 even though their transmutation effort failed on January 1, 2002,

1 Wong's services at the restaurant, which she contends are her
2 separate property, increased the value of Chen's separate
3 property, the LLC shares. Thus she is entitled to a reimbursement
4 right under Cal. Fam. Code § 2640(c) in the form of LLC shares.
5 Accordingly, Defendants contend that the Trustee is not entitled
6 to any additional consideration for Wong's purchase of the
7 estate's interest in the LLC since Wong had obtained an equitable
8 interest in at least some portion of the LLC shares by the time of
9 the sale in November 2007. The Trustee filed her opposition to
10 Defendants' motion on May 15, 2009.

11 At the May 27 hearing on Defendants' motion, counsel for
12 Defendants cited cases and raised new arguments not presented in
13 their brief. In light of this, the court allowed the Trustee to
14 file a supplemental response to address the new cases and
15 arguments raised by Defendants. The Trustee filed her response on
16 June 15, 2009, and the matter was deemed submitted.

17 As explained below, leaving aside the Fed. R. Civ. P.
18 60(b)(1) procedural issues raised by the Trustee, the court
19 rejects Defendants' arguments and therefore denies their motion.

20 II. DISCUSSION

21 In support of their claim of Wong's reimbursement right,
22 Defendants rely on Cal. Fam. Code § 2640(c) which provides in
23 relevant part:

24 § 2640. Contribution to the acquisition of property of the
25 community property estate; waivers; amount of reimbursement

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27 (c) A party shall be reimbursed for the party's separate
28 property contributions to the acquisition of property of
the other spouse's separate property estate during the
marriage, unless there has been a transmutation in writing
. . . or a written waiver of the right to reimbursement.

1 Cal. Fam. Code § 2640(c) became effective on January 1, 2005.
2 Prior to the enactment of subsection (c), a reimbursement right
3 under § 2640 applied only in cases where one spouse used his or
4 her separate property to acquire community property. Although §
5 2640 appears to apply only in cases of "acquisition," it has been
6 interpreted to include a reimbursement right to a spouse who
7 contributed his or her separate property to "improve" community
8 property. See In re Marriage of Cross, 94 Cal. App. 4th 1143
9 (2001). Presumably, even with the addition of subsection (c),
10 this interpretation has not changed.

11 Therefore, as of January 1, 2005, upon dissolution a spouse
12 can obtain a reimbursement right if he or she contributed his or
13 her separate property, generally in monetary form, to acquire or
14 improve the other spouse's separate property. Defendants concede
15 that subsection (c), which gives rise to Wong's potential claim,
16 did not exist until 2005.

17 Generally, legislative enactments are presumed to operate
18 prospectively and not retroactively, unless the legislature
19 intends otherwise. McCoy v. Bank of Am. (In re McCoy), 111 B.R.
20 276, 281 (9th Cir. BAP 1990)(citing In re Marriage of Bouquet, 16
21 Cal. 3d. 583, 587 (1976)). Nothing in the legislative history
22 regarding subsection (c) suggests that it be applied
23 retroactively, and, in fact, retroactively applying § 2640 would
24 result in an unconstitutional deprivation of the other spouse's
25 property rights; to apply it deprives the owner-spouse of due
26 process. Walrath v. Walrath (In re Marriage of Walrath), 17 Cal.
27 4th 907, 915 (1998). Therefore, Wong's reimbursement right of an
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1 interest in the LLC shares, if any, could have only began accruing
2 after January 1, 2005. The sale occurred in November 2007. In
3 the typical dissolution case, Wong's reimbursement right claim, if
4 any, would constitute only the equitable interest she accrued in
5 the LLC shares from January 1, 2005 to November 14, 2007.

6 However, even if subsection (c) applies to that relevant time
7 period, the Defendants have another problem to overcome. They
8 contend that Wong's services to the restaurant are her separate
9 property, which gives rise to her reimbursement right. That
10 argument must fail, as long established California law holds that
11 a spouse's effort, time and skill provided during the marriage are
12 community assets. Worth v. Worth (In re Marriage of Worth), 195
13 Cal. App. 3d 768, 773 (1987). Further, even if Wong's services
14 constituted her separate property, the Defendants offer no
15 authority to support their position that services which improve
16 the other spouse's separate property, as opposed to expenditures
17 or contributions of funds, can entitle the non-owner spouse to a
18 reimbursement right under Cal. Fam. Code § 2640(c).³

19 Even presuming Defendants are correct in their legal theories
20 regarding Wong's services, and that subsection (c) could apply to
21 the equitable interest she accrued in the LLC shares from January
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23 ³ Defendants cited two cases to support their argument that a
24 spouse's contribution of separate property services to the
25 improvement of the other spouse's property can form the basis of a
26 Cal. Fam. Code § 2640(c) reimbursement right - Nicolson v. Saprks
27 (In re Marriage of Nicolson), 104 Cal. App. 4th 289, 296 (2002),
28 and Cross v. Cross (In re Marriage of Cross), 94 Cal. App. 4th
1143 (2001). Neither of these cases support their position.
First, both cases were decided before subsection (c) was enacted,
which provides the basis for Wong's claim. Second, neither of the
cases discuss "services" but contemplate only the contribution of
funds that improved community, not separate, property.

1 1, 2005 to November 14, 2007, the issue of bankruptcy in this case
2 defeats their claim entirely.

3 The characterization of property as separate or community as
4 of the date of the petition, so as to be included or excluded from
5 property of the estate, is determined under applicable state law.
6 McCoy, 111 B.R. 276, 279 (9th Cir. BAP 1990)(citing 4 Collier on
7 Bankruptcy ¶ 541.15 (15th ed. 1988)). However, once that
8 determination is made, federal bankruptcy law dictates to what
9 extent that interest is property of the estate. In re N.S.
10 Garrott & Sons, 772 F.2d 462, 466 (8th Cir. 1985); 11 U.S.C. §
11 541. Furthermore, when a debtor files bankruptcy, an automatic
12 stay immediately arises pursuant to section 362(a). It effects an
13 immediate freeze of the status quo by precluding and nullifying
14 most postpetition actions against the debtor in nonbankruptcy
15 fora, judicial or nonjudicial, as well as most extrajudicial acts
16 against the debtor, or affecting property in which the debtor, or
17 the debtor's estate, has a legal, equitable or possessory
18 interest. I.C.C. v. Holmes Transp., Inc. 931 F.2d 984, 987 (1st
19 Cir. 1991); Hillis Motors Inc. v. Haw. Auto. Dealers' Ass'n, 997
20 F.2d 581, 585 (9th Cir. 1993).

21 Here, there was no division of the marital estate property or
22 an effective transmutation under state law prior to Chen's
23 bankruptcy. Therefore, as of the petition date, July 25, 2003,
24 Chen held a 100% ownership interest in the LLC as his separate
25 property, and thus it was property of Chen's estate under section
26 541. As property of the estate, absent an agreement with the
27 Trustee or order from this court, the automatic stay of section
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1 362(a) effected an immediate freeze of the status quo, this
2 preventing any of Chen's 100% interest in the LLC shares from
3 being transmuted into Wong's separate property. Therefore, as a
4 matter of law, Wong has no reimbursement right of the LLC shares
5 under Cal. Fam. Code § 2640(c).

6 Yet another problem with Defendants' position is the fact
7 that what Wong's efforts improved was the restaurant, which is
8 owned by Shanghai 1930 Restaurant Partners, L.P. Therefore,
9 because of this "double-entity" issue, the court is not persuaded
10 that Wong's efforts that benefitted the limited partnership would
11 entitle her to a reimbursement right of shares of the LLC.
12 Defendants did not cite, and the court could not locate, any
13 California case that supports their position on this issue.

14 Finally, all cases cited by the Defendants involved the
15 division of property upon dissolution. Since there was no
16 dissolution here, the court finds no basis to conclude that Cal.
17 Fam. Code § 2640(c) is even applicable to the facts of this case.

18 **III. CONCLUSION**

19 For the reasons stated above, the court denies Defendants
20 motion to reconsider. The Trustee's second and third causes of
21 action have been taken under submission, and a memorandum decision
22 will soon be issued disposing of those actions. A final judgment
23 on this motion and the remaining causes of action is to follow.

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25 * * * END OF MEMORANDUM DECISION * * *
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